Supreme Court, U.S.
FILED
AUG 18 2004
OFFICE OF THE CLERK

No. 04 238

In The

Supreme Court of the United States

RANDOLPH WALKER,

Petitioner,

v.

LUCY POSEY WAINWRIGHT, STATE FARM INSURANCE COMPANY, JOHN G. WALRATH, ATTORNEY, AND ALAN W. CONNELL, ATTORNEY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

RANDOLPH WALKER
615 East Walker Street
Thomaston, GA 30286
(706) 648-3865

QUESTION PRESENTED

Denied me the property right with out due process of law.

CERTIFICATE OF INTERESTED PERSONS

I hereby certify that the following have an interest in the out come of this case.

1. State Farm Insurance – Robert Fallin
2. Atlanta Casualty Insurance – Policy No. 0280 7565
3. Attorney John G. Walrath
4. Mr. Edward A. Swanson
5. Upson County Superior Court Judge Christopher Edwards
6. Henning Mediation and Arbitration Service
7. Attorney Alan W. Connell
8. Attorney Deann Wheeler
9. Lucy Posey Wainwright

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The Opinion of the United States Court of Appeals for the Eleventh Circuit was filed April 19, 2004 and is unpublished. It is reprinted in the Appendix at App. 1. The order and judgment of the United States District Court for the Middle District of Georgia, Macon Division, filed October 23, 2003 are unpublished. They are reprinted in the Appendix at App. ___.

STATEMENT OF JURISDICTION

Although the district court held that it lacked subject matter jurisdiction under 28 U.S.C.A. § 1332 (1993 & Supp. 2002) on the basis that it believed the complaint involved an amount less than $75,000, the district court was in error on this critical point, as the "Argument" contained in this brief will show.

Otherwise, this Court has jurisdiction over the district court's dismissal, because it is a "final decision" for purposes of 28 U.S.C.A. § 1291 (1993). *See generally* 19 *Moore's Federal Practice* § 202.11[1][a] (3d ed. 2002) ("An order dismissing the action is appealable.").

STATUTORY PROVISIONS INVOLVED

This case concerns the activity under Color of Law actor liability. 42 U.S.C. § 1983.

STATEMENT OF THE CASE

I Randolph Walker a 58 year old male who were involved in a automobile accident May 11, 1994. I sustained injuries to neck, back, left arm, leg, and feet. Bottom of Left feet go numb and pain all the time only relief I get is the chiropractic. Ten unit cervical traction and daypro 600 mg. Tablets. I wash windows for a living with great pain in my neck, low back, left arm, feet and big toe. I need medical treatment on a regular basis. My neck and back is worst from the injuries I sustain in the accident. My attorney John G. Walrath poorly represented me at the arbitration. The judge was not fair in his ruling for not having all the facts because John G. Walrath did not have the paper I sent him that Attorney Alan W. Connell ask for at the arbitration.

STATEMENT OF FACTS

On May 11, 1994 at 12:00 or 1:00 I was on my way to a part time job doing yard work when Ms. Lucy Wainwright hit my car on the driver side front and back door and knocked down a city street sign at high speed and total my car out. Thomaston police Lt. Ellerbee would not call the ambulance emergency medical or paramedic's service to carry me to the Upson Regional Medical Center after I was in pain sitting in my car. A lady passing stopped and took me to Upson Regional Medical Hospital. Lucy Posey Wainwright attorney Alan Connell and De Ann Wheeler told the Judge at the arbitration Ms. Wainwright car just were moving slowly when she hit me and did so much damage. After Attorney John G. Walrath was dismiss from this case I call State Farm Insurance Company and I talked to the lady handling the claim who is

also a defendant of this case I told what had happen she told me I need to listen to my attorney. I also had a witness that saw the accident my attorney did not see to him Kevin Griffin at 2134 Scarbough, Stone Mountain, Georgia coming to the arbitration. For my pain and suffering I'm asking for a settlement of $75,000.00 seventy-five thousand dollars.

Ms. Wainwright attorney said in his brief that my appeal was out of time to Court of Appeal. I filed this appeal in a timely manner with Upson County Clerk. After I did not hear from the Courts of Appeals I went to Upson County Clerk Office to see what had happen. Ms. Rose Mary Hill told me they did not have the case she gave me a number to call the judge's office to get the file where they could send it. I had already made arrangements to send this case to court of Appeals from Upson County Clerk Office, February 19, three days after the hearing of Judge Christopher Edwards ruling.

The Court of Appeals of Georgia refused to consider my appeal and in so doing Denied me due process of law.

I have been seen by the following doctors:

Dr. Ralph Warnock	11-21-94
Arrowhead Clinic	5-10-94 thru 9-13-94
Dr. Mark Cotney	2-15-95
Mr. Joseph N. Saba	7-6-95
Dr. Dean Fuller	7-6-01
Upson Regional Medical Center	11-21-94

The first year Mr. Walrath told me he was going to go to Superior Court. About 6 month later, he told me he was not going to court because if we did go we would lose the case.

I, Randolph Walker, did not understand that by agreeing to arbitration of the above case that I was agreeing to only receive $4,500.00 in total. My lawyer at the time, Mr. John G. Walrath and his paralegal Mr. Edward A. Swanson, failed to explain the process of the arbitration proceedings in regard to the settlement monies for my medical bills and payment for my car. Mr. John G. Walrath's paralegal, Mr. Edward A. Swanson first called me about the arbitration and told me that John wanted to talk with me about arbitration. He said the most I would get is $4,500.00. I told him that was not enough to settle the claims and Mr. Swanson replied, "You must have forgot how things go." I informed my attorney, Mr. Walrath, of what Mr. Swanson had said and Mr. Walrath told me that he did not know what Mr. Swanson was talking about. Mr. Walrath still spoke of paying all my medical bills and for my car and he told me that he would get more than $4,500.00. He told me he might consider a settlement of at least $10,000.00. Both Mr. Walrath and Mr. Swanson led me to believe that I would get enough money to pay my entire medical bills and payment for my car. After convincing me of this I trusted their judgment. At the arbitration Mr. Allen W. Connell, the attorney for Ms. Wainwright, asked if I had any outstanding bills and I told him I had bills in my file and my lawyer, Mr. Walrath, kicked my foot under the table. I don't understand why he did that. I know my attorney did not do me justice and I did not agree to the $4,500 or any amount before the arbitration. I had traction in the hospital for my neck and back. I had

cervical traction of 7 to 10 pounds but I could not do that much and I have to wear a back brace everyday. I had full insurance coverage at the time of the accident. I went without a car for one year. I have not signed the check from the arbitration because my understanding was that I was to get enough money for the above mentioned bills and my car. Mr. Walrath also told me he was going to get the hospital and the doctors to take less money but they keep telling me that I am responsible to pay these bills in full. The hospital initiated garnishment proceedings against me however, after I talked with them they withdrew it and I agreed to pay the hospital at least $20.00 per month along with the October payment of $450.00.

ARGUMENT

Judge Christopher Edwards of Upson County Superior Court stated during court that I must have been holding out in order to just get more money but that was not going to happen. This was not my intention at all. I just wanted enough money to pay the bills that had accumulated due to the injuries I received from the accident and reimbursement for my car. Judge Christopher Edwards did not look into the facts and conclusion of the law.

My attorney Mr. John G. Walrath filed a motion that was not in my favor. He went against what I asked him to do. The judgment in this case was in dispute because all medical bills were not covered by the settlement my attorney got. My attorney did not handle my case properly. He did not promote a settlement in my best interest. This is why I am asking this court to render a motion in my favor.

The state has coerced or at least significantly encourages the action alleged to violate the constitution.

Actors in this case are Judge Grant Brantley, the arbitrator and all actors at the arbitration. Judge Grant Brantley, Attorney John G. Walrath, Attorney Deann Wheeler and Alan Connell are liable for intentional tort, their combined activity constitutes state action and activity under color of law and liable under 1983 State Law. Judge Grant Brantley of Henning Mediation and Arbitration Service Incorporated, 3350 Riverwood Parkway, Riverwood Building, Lobby – Suite 75, Atlanta, Georgia 30339, Phone Number 800-843-6050 and Judge Christopher C. Edwards, Judge of Upson County Superior Court, Griffin Judicial Circuit, denied my claim for release. My claim has shown that the actor in this case, the respondents have acted under Color of State Law 1983.

The appearance of semblance, without the substance of legal right, misuse of power possed by virtue of state and made possible only because the wrongdoer is clothed with authority of state, is action taken under color of law, 42 U.S.C. 1983. I was unjustly mistreated in the arbitration because Mrs. Wainwright was a white lady and I am a person of color. Her attorney Deann Wheeler and Alan Connell would whisper out loud when I was talking to the Judge. These attorneys were very rude and impolite at the arbitration. They denied my claim for release. My claim showed that the actors in this case, the respondents have acted under color of State Law 1983. *See Esther Key v. Allstate Insurance Co.*, No. 95,321 (Aug. 1, 1996) and *John Conley, Jr. v. State Farm Automobile Insurance Co.*, 342 F. Supp. 397 (May 23, 1972).

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's order dismissing this case for lack of subject matter jurisdiction and remand this case to the district court for further proceedings, including, if necessary, a trial on the merits.

Respectfully submitted,

RANDOLPH WALKER
615 East Walker Street
Thomaston, GA 30286
(706) 648-3865

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-15599
Non-Argument Calendar

D. C. Docket No. 03-00283-CV-WDO-5-4

RANDOLPH WALKER,

Plaintiff-Appellant,

versus

LUCY POSEY WAINWRIGHT,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Georgia

(April 19, 2004)

Before BLACK, BARKETT and HULL, Circuit Judges.

PER CURIAM:

Randolph Walker, proceeding pro se, appeals the district court's dismissal with prejudice of his civil complaint for failure to state a claim over which the district court had jurisdiction. After review, we affirm.

In 1994, Walker was involved in an automobile accident with Lucy P. Wainwright. After an arbitrator awarded Walker $4,500, Walker and his attorney, John Walrath, got into a dispute over the amount of attorney's fees that were warranted. Walker filed a complaint with the State Bar of Georgia. The fee arbitrator awarded the $4,500 to be dispersed as follows: $750 to Walrath; that Walrath should determine whether the $500 fee to the Wainwright's attorney should be paid; and that the balance of the proceeds should be paid to Walker.

Apparently, Walker disagreed with the fee arbitrator's decision and refused pay Walrath. Walrath filed an action in state court attempting to force Walker to agree to the fee arbitrator's decision. According to Walker, the state court judge informed the parties that he could not force them to agree to the fee arbitrator's decision, but that if Walker was merely holding out for more money "it was not going to happen."

Walker then filed this federal action against Wainwright, the person he was involved in the car accident with, claiming that he was discriminated on the basis of his race during the arbitration hearings and state court proceedings. Walker asked the federal district court to "correct the error that the Superior Court of Upson County made," review the arbitration records, and award him $100,000 for the injuries he sustained in the car accident. Walker did not name as defendants his attorney, any of the arbitrators, or the state court judge. Nor did he allege that Wainwright was involved, in any way, with any form of conspiracy to deny him any of his constitutional rights.

The district court gave Walker thirty days "to show cause why this case should not be dismissed for failure to

state a claim over which this court has jurisdiction." The district court then dismissed Walker's case, stating: "Plaintiff has not presented any claims over which this court has jurisdiction. Stated differently, this court does not have the *power* or *authority* to do what [Walker] is asking the court to do in this case."

Section 1983 affords relief for individuals who have been deprived of a constitutional right by an individual who was acting under color of state law. *Flagg Bros., Inc. v. Brooks,* 436 U.S. 149, 156-57, 98 S. Ct. 1729, 1733-34 (1978). "[B]ecause § 1983 only provides for claims to redress State action," we must determine whether Walker may proceed under a theory that Wainwright is an actor for the purposes of § 1983. *Rayburn v. Hogue,* 241 F.3d 1341, 1347 (11th Cir. 2001). For it is "'[o]nly in rare circumstances'" that a private party will be viewed as a state actor for § 1983 purposes. *Id.* (quoting *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992)). In fact, Wainwright, a private citizen, will be considered a state actor under § 1983 only if one of the following three conditions is met:

> (1) the State has coerced or at least significantly encouraged the action alleged to violate the Constitution ("State compulsion test"); (2) the private parties performed a public function that was traditionally the exclusive prerogative of the State ("public function test"); or (3) "the State had so far insinuated itself into a position of interdependence with the [private parties] that it was a joint participant in the enterprise[]" ("nexus/joint action test").

Id. (citation omitted and alterations in original).

Although Walker may very well be unhappy with his arbitration award and state court proceeding, he has not alleged any facts, even construing his complaint and appellate brief liberally, that could lead to the conclusion that Wainwright, a private citizen and the only named defendant, is a state actor for the purposes of § 1983.

Walker has also failed to alleged that he and Wainwright are citizens of different states, a necessity for diversity jurisdiction. Consequently, the district court correctly determined that Walker failed to state a claim over which the court had jurisdiction.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

RANDOLPH WALKER,	:	
Plaintiff	:	
v.	:	**5:03-CV-283-4 (WDO)**
LUCY P. WAINRIGHT,	:	
Defendant	:	

ORDER

(Filed Oct. 23, 2003)

In 1994, the parties in this case were involved in an automobile collision in Thomaston, Georgia. Following the collision, Plaintiff Walker was referred to an attorney, John Walrath, by his chiropractor at the Arrowhead Clinic. Plaintiff, through his attorney, filed a case in Upson County Superior Court related to the accident. Prior to trial, the case was presented to an arbitrator who awarded the Plaintiff $4,500. The Superior Court of Upson County entered an award for that amount on March 16, 2001. The order directed that $500 be paid to Defendant's attorney and that the remaining $4,000 be paid to the Plaintiff.

When the Plaintiff and Mr. Walrath could not agree on the matter of attorney's fees, Plaintiff Walker filed a complaint with the State Bar of Georgia. The State Bar ordered the matter arbitrated. The fee arbitrator awarded $4,500 to be disbursed as follows: $750 for Mr. Walrath; that Mr. Walrath should determine whether the $500 fee to the Defendant's attorney should be paid; and that the balance of the proceeds should be paid to Plaintiff Walker.

When Plaintiff and his attorney failed to resolve their differences over the fee, Plaintiff Walker filed the case at bar naming Ms. Wainright as the only Defendant. Plaintiff contends the matters before the Superior Court of Upson County were handled in a way that was racially discriminatory toward him.

This is the second case Plaintiff filed in this court related to this same automobile accident. The first case was filed on July 3, 2002. *See Walker v. Wainright*, 5:02-CV-233-2 (CAR). In that case, Plaintiff Walker asserted claims identical to the ones in the case at bar. Although plaintiff received permission to proceed *in forma pauperis* ("IFP"), the case was dismissed on July 16, 2002 after the initial frivolity review based on the following findings: Plaintiff failed to cite any federal law as the basis for his complaint; there was no federal question jurisdiction to hear the case; and there was no diversity jurisdiction to hear the case. Plaintiff filed a Notice of Appeal of that dismissal on September 16, 2002, No. 02-15066-AA. On appeal, Plaintiff's permission to proceed IFP was denied because the court of appeals found the appeal was frivolous. The appeal was dismissed for want of prosecution when the Plaintiff failed to file the record excerpts within the applicable time frame. *See Walker v. Wainright*, No. 02-15066-AA (11th Cir. Jan. 17, 2003).

Plaintiff filed a second, unrelated case in this court on July 9, 2002. *See Walker v. Quadgraphic*, 5:02-CV-232-1 (WDO). In that case, Plaintiff alleged the State Board of Workers Compensation improperly denied his request to change physicians after an on-the-job eye injury in November of 1989. Apparently the Georgia State Board of Worker's Compensation (the "Board") directed the Paintiff to see Dr. Charles Speakman. Plaintiff complained that

Dr. Speakman and his staff were biased against him. Based on this alleged bias, Plaintiff asked the Board to allow him to change physicians from Dr. Speakman to two other doctors. In the case Plaintiff filed before this court, he sought a change in physicians, the cost of his mileage to see the new physicians and for new glasses.

This court held that Plaintiff had not alleged any facts which would constitute a deprivation of constitutional rights under § 1983, based on the court's assumption that § 1983 was the basis for his claims. Second, the only named defendant, Quadgraphic, Inc., was not even mentioned in the body of the complaint. Further, there was no allegation that Quadgraphic was a state actor or that any claims asserted against it would establish that Quadgraphic was acting under color of state law. This court found that Plaintiff failed to state a claim under § 1983 and the case was dismissed. Plaintiff then filed a motion to amend the complaint and to proceed IFP, both of which were denied. Plaintiff appealed those orders.

The court of appeals allowed the appeal to proceed in part and dismissed it in part for lack of jurisdiction. The court of appeals found that Plaintiff Walker failed to file a timely Notice of Appeal from the original dismissal and therefore Plaintiff could not appeal that order. However, the court of appeals permitted Plaintiff to proceed with his appeal of the order that denied his post-judgment motion to amend and to proceed IFP. The court of appeals later affirmed this court's finding that it did not have jurisdiction over Plaintiff's claims. *See Walker v. Quadgraphic, Inc.*, No. 02-15065 (11th Cir. Jul. 16. 2003).

Based on the foregoing, Plaintiff was given thirty (30) days to show cause as to why this case should not be

dismissed for failure to state a claim over which this court has jurisdiction. Plaintiff was warned that failure to show cause would result in the case being dismissed with prejudice. Since that time, Plaintiff filed a medical bill and a brief which merely restates his position asserted in the complaint. Plaintiff presented no legal arguments and cited no case law or statute that would provide him any relief based on the facts alleged. Understandably, Plaintiff is frustrated at his inability to obtain compensation for his injuries in an amount he deems sufficient. However, Plaintiff has not presented any claims over which this court has jurisdiction. Stated differently, this court does not have the *power* or *authority* to do what Plaintiff is asking the court to do in his case. Because Plaintiff failed to state a claim upon which relief can be granted, his case is **DISMISSED WITH PREJUDICE**.

SO ORDERED this 23rd day of October 2003.

/s/ Wilbur D. Owens, Jr.
WILBUR D. OWENS, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

RANDOLPH WALKER,	:	
Plaintiff,	:	***C. A. NO. 5:03-CV-283-4(WDO)***
v.	:	***Civil Order File Volume 88,***
LUCY P. WAINRIGHT,	:	***Page 9111***
Defendant.	:	

JUDGMENT

(Filed Oct. 23, 2003)

Pursuant to the Order of this Court filed October 23, 2003, JUDGMENT is hereby entered dismissing this action.

This 23rd day of October, 2003.

GREGORY J. LEONARD, CLERK

/s/ C Alston
Cheryl M. Alston, Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-15599-JJ

RANDOLPH WALKER,

Plaintiff-Appellant,

versus

LUCY POSEY WAINWRIGHT,

Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
(Opinion _____, 11th Cir., 19__, ___ F.2d ___).

(Filed Jun. 14, 2004)

Before: BLACK, BARKETT and HULL, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35,

Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Frank M. Hull
UNITED STATES CIRCUIT JUDGE